

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of: David WALLACH et al.
Application No.: 09/380,546
Filed: November 29, 1999
For: CASH (CASPASE HOMOLOGUE) WITH DEATH EFFECTOR ...

Conf. No.

Art Unit: 1633

Examiner: S. Kaushal

Washington, D.C.

Atty.'s Docket: WALLACH=23

Date: May 9, 2002

1633
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THE COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

Sir:

Transmitted herewith is a ☒ Amendment ☐ Form 08A/1449

in the above-identified application.

☐ Small Entity Status: Applicant(s) claim small entity status. See 37 C.F.R. §1.27.☐ No additional fee is required.☒ The fee has been calculated as shown below:

	(Col. 1)		(Col. 2)	(Col. 3)
	CLAIMS REMAINING AFTER AMENDMENT		HIGHEST NO. PREVIOUSLY PAID FOR	PRESENT EXTRA EQUALS
TOTAL	* 24	MINUS	** 43	0
INDEP.	* 2	MINUS	*** 4	0
FIRST PRESENTATION OF MULTIPLE DEP. CLAIM				

ADDITIONAL FEE TOTAL

SMALL ENTITY	
RATE	ADDITIONAL FEE
x 9	\$
x 42	\$
+ 140	\$
ADDITIONAL FEE TOTAL	
\$	

OTHER THAN SMALL ENTITY	
RATE	ADDITIONAL FEE
x 18	\$
x 84	\$
+ 280	\$
TOTAL	
\$	

* If the entry in Col. 1 is less than the entry in Col. 2, write "0" in Col. 3.

** If the "Highest Number Previously Paid for" IN THIS SPACE is less than 20, write "20" in this space.

*** If the "Highest Number Previously Paid for" IN THIS SPACE is less than 3, write "3" in this space.

- The "Highest Number Previously Paid For" (total or independent) is the highest number found from the equivalent box in Col. 1 of a prior amendment of the number of claims originally filed.

☒ Conditional Petition for Extension of Time

If any extension of time for a response is required, applicant requests that this be considered a petition therefor.

☒ It is hereby petitioned for an extension of time in accordance with 37 CFR 1.136(a). The appropriate fee required by 37 CFR 1.17 is calculated as shown below:

Small Entity

Response Filed Within

☐ First - \$ 55.00
☐ Second - \$ 200.00
☐ Third - \$ 460.00
☐ Fourth - \$ 720.00

Month After Time Period Set

Other Than Small Entity

Response Filed Within

☐ First - \$ 110.00
☐ Second - \$ 400.00
☒ Third - \$ 920.00
☐ Fourth - \$ 1440.00

Month After Time Period Set

☐ Less fees (\$) already paid for ___ month(s) extension of time on _____.☐ Please charge my Deposit Account No. 02-4035 in the amount of \$ _____.☒ Credit Card Payment Form, PTO-2038, is attached, authorizing payment in the amount of \$ 920.00.☐ A check in the amount of \$ _____ is attached (check no.).

☒ The Commissioner is hereby authorized and requested to charge any additional fees which may be required in connection with this application or credit any overpayment to Deposit Account No. 02-4035. This authorization and request is not limited to payment of all fees associated with this communication, including any Extension of Time fee, not covered by check or specific authorization, but is also intended to include all fees for the presentation of extra claims under 37 CFR §1.16 and all patent processing fees under 37 CFR §1.17 throughout the prosecution of the case. This blanket authorization does not include patent issue fees under 37 CFR §1.18.

BROWDY AND NEIMARK, P.L.L.C.

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By: _____
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Atty. Docket: WALLACH=23

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David WALLACH et al)	Art Unit: 1633
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Appln. No.: 09/380,546)	Examiner: S. Kaushal
)	
Filed: November 29, 1999)	Washington, D.C.
)	
For: CASH (CASPASE HOMOLOGUE))	May 9, 2002
WITH DEATH EFFECTOR DOMAIN,)	
MODULATORS OF THE FUNCTION)	
OF FAS RECEPTORS)	

REQUEST FOR INTERFERENCE UNDER 37 C.F.R. §1.607

Honorable Commissioner for Patents
Washington, D.C. 20231

Sir:

Pursuant to 37 C.F.R. §1.607, applicants hereby request to have an interference declared between the above-identified application and U.S. Patent 6,242,569. The requirements of 37 C.F.R. §1.607(a) will be fulfilled in the following sections which correspond to the sub-sections of 37 C.F.R. §1.607(a).

(1) The patent is identified as Shu et al patent no. 6,242,569, which patent is assigned on its face to Tularik Inc.

(2) The proposed count is:

Claim 1 of U.S. patent 6,242,569

or

Claim 54 of application no. 09/380,546.

(3) All of claims 1-8 of patent 6,242,569 correspond to the proposed count.

(4) At least claims 54, 55 and 57 of the above-identified application, which are already pending in the present application, correspond to the proposed count. Claim 54 of the present application corresponds exactly to the second paragraph of the bifurcated proposed count, and claim 1 of the '569 patent corresponds exactly to the first paragraph of the bifurcated proposed count. SEQ ID NO:2 of the Shu patent is identical to SEQ ID NO:2 of the present application except that the "Asn" at position 369 in SEQ ID NO:2 of the present application is an "Asp" at the same position of Shu's SEQ ID NO:2. Present claims 54, 55 and 57 are all broad enough to encompass both the presently-claimed SEQ ID NO:2 and the SEQ ID NO:2 of Shu, which differs therefrom by a single amino acid residue. Thus, all of these claims correspond to the count as they read on the common embodiment.

Patent claim 2 corresponds to the count as it only adds an inherent feature of Shu's SEQ ID NO:2. Patent claim 4 is broad enough to read on SEQ ID NO:2 as well. Patent claim 5 is a product-by-process claim with the process being an obvious process for making a protein. Furthermore, a protein claimed in product-by-process claim form is not patentably

distinct from the same protein made by any other process. Patent claims 3, 6, 7 and 8 are drawn to fragments of the Shu SEQ ID NO:2, which fragments are not patentably distinct from the generic claim from which they depend, as they have no unexpected properties. Thus, they are directed to the same patentable invention as the count and must be considered to correspond substantially to the count.

(5) All of application claims 54, 55 and 57, identified as corresponding to the count, have previously been in the application and, thus, the terms of same need not be applied to the disclosure of the application pursuant to 37 C.F.R. §1.607(a)(5). Changes have been made in said claims on even date herewith in response to an outstanding official action.

(6) The Shu et al patent issued on June 5, 2001, and therefore the present request is being made within one year after the issue date of the patent.

In accordance with 37 C.F.R. §1.607(b), it is requested that examination of this application be conducted with special dispatch within the Patent and Trademark Office. Furthermore, in accordance with 37 C.F.R. §1.607(d), it is requested that a notice that an applicant is seeking to provoke an interference with the patent be placed in the file

of the patent, and a copy of the notice sent to the patentee without identifying the present applicants.

STATEMENT UNDER 37 C.F.R. §1.608(a)

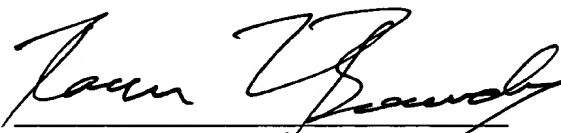
The effective filing date of the present application, i.e., the filing date of Israel priority application 120367 on March 3, 1997 (as well as that of Israeli priority application 120759, filed on May 1, 1997), is three months or fewer after the effective filing date of the patent, i.e., February 5, 1997. In order to comply with 37 C.F.R. §1.608(a), the undersigned hereby states that there is a basis upon which the applicants are entitled to a judgment relative to the patentee.

Accordingly, it is requested that, following the determinations required therein, an interference be declared in accordance with 37 C.F.R. §1.607(b).

Respectfully submitted,

BROWDY AND NEIMARK, P.L.L.C.
Attorneys for Applicant(s)

By


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